

CENTRAL INFORMATION COMMISSION
Club Building, Opposite Ber Sarai Market,
Old JNU Campus, New Delhi - 110067.
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Decision No. CIC/SG/C/2009/001193/5009

Complaint No. CIC/SG/C/2009/001193

Complainant : Mr. Ved Prakash Sharma,
R/o- 13/25, Shakti Nagar,
Delhi-110007

Respondent : Mr. Bhagwan Das Sharma
Senior Citizens Welfare Association(Regd.)
C/o Shri Bhagwan Dass,
President, SCWA, 7365, Prem Nagar,
Shakti Nagar, New Delhi-110007

RTI application filed on : 10/10/2008 & 20/10/2008
PIO replied : Not mentioned
First Appeal filed on : 24/02/2009
Complaint filed on : 22/08/2009

Information sought:

Complainant filed first Appeal seeking information by two different RTI Applications:

- Information sought vide Application dated 10/10/2008 was the following:
 1. Copy of Agenda Meeting held on 02/10/2008 under the signatures of the secretary dated 13/09/2008 regarding Governing body meeting of the Sr. Citizens Welfare Assn.
 2. Along with a certified copy of the minutes of the meeting of the Governing body held on 02/10/2009
 3. Copy of the list of the newly constituted Governing Body of the SCWA duly certified which is without any date as sent to the Governing Body members of the SCWA.
- Information sought vide Application dated 20/10/2008 were following:
 1. Copy of the Complainant's letter dated 07/10/2008 addressed to Shri Kewal Krishan Chandha
 2. Regarding this Complainant sought information in following manner regarding the amounts received by the Treasures w.e.f 29/06/ 2008 to 31/08/2008 and receipts issued to the members/ non members of SCWA and others in the following:
 - (a) SCWA Cash Receipt No
 - (b) Date of issue
 - (c) Name of the person whom amount received.
 - (d) Whether member of SCWA or not on the date of receipt of money vide shown at sl.no. (b) above.
 - (e) On account of donation..... Donation, subscription for the year/ admission fee.
 - (f) Whether the amount so received deposited in the SCWA A/C with the State Bank of India, Shakti Nagar, Delhi Branch or not.
 - (g) Photo copy of each receipt supplied/

Reply of PIO:

No response.

Grounds for First Appeal:

Information not provided by the PIO.

Grounds for Complaint:

Complainant mentioned that no PIO/Appellate Authority has been appointed. Information not provided.

Relevant Facts emerging during Hearing on 25/09/2009:

The following were present:

Complainant: Mr. Ved Prakash Sharma

Respondent: Mr. Bhagwan Das Sharma, President along with Vice President Mr. Bhagirath Singh, Secretary Mr. M.L.Bansal and Mr. O.P.Verma member of the Governing Body.

The Complainant filed an RTI application and no reply had been given. The body is a Senior Citizens Welfare Association and claims that they are not a public authority. The Appellant argued that the Association had been provided an office free of cost by MCD. He contended that the furniture and power were also provided free of cost by the MCD. His contention was that substantial funding was being provided by the Government, and hence the Association is a public authority as defined under Section 2 (h) (ii) of the RTI Act. The Respondents pointed out that it was an Association comprising of about 300 senior citizens and that it was being run on a voluntary basis by the members who are appointing a Committee to manage its affairs. They pointed out that they did not have a proper office or any employees who could answer RTI queries. The Commission asked the Respondent about the area of the office being occupied by the Association. The respondent stated that they were using an office of about 300 square feet. The appellant also pointed out that recently the Association had obtained a grant of Rs.50000/-

The order was reserved on 25/09/2009.

Decision delivered on 05 October 2009:

The Appellant's contention is that the Association is a non-Government organisation, which is substantially financed by the appropriate Government. He states that the organisation has been given about 300 square feet place free of cost and that no rent is charged for this by the MCD. He also states that the electricity and furniture used in the office is not charged. The monetary value of this is estimated at about Rs. 24000/ per year. He has further submitted that the Association has been given a sum of Rs. 50,000 recently for carrying out certain activities. The respondent agrees that this is true but states that the Association is not in a position to discharge the responsibilities required to be discharged by a Public authority under the Right to Information Act since it has no fulltime employee and the members are doing the work voluntarily. The issue before the Commission which needs to be decided is whether the Association is 'substantially financed'?

Section 2(1)(h) of the RTI Act defines 'public authority'.

- h) **"public authority"** means any authority or body or institution of self government established or constituted,—

- (a) by or under the Constitution ;
- (b) by any other law made by Parliament;
- (c) by any other law made by State Legislature;
- (d) by notification issued or order made by the appropriate Government,
and includes any--
 - (i) body owned, controlled or substantially financed;
 - (ii) non-Government organisation substantially financed,
directly or indirectly by funds provided by the appropriate Government;”

One could argue that any organisation which receives any amount of funding should be considered to be a public authority for the purpose of RTI Act since Citizens have a right to know how their money is being spent. This would lead to a situation that the word ‘substantial’ in the provision becomes redundant. It would mean that the definition of public authority would then become so wide that it would run contrary to the boundaries laid by the Parliament. It is clear from the wording of Section 2(1)(h) that the Parliament did not wish to cover all organisations which may have received any amount of funding from the appropriate Government under the definition of public authority. The Right to Information Act does not provide any guidance with regard to what is meant by ‘substantially financed’. The Oxford English Dictionary defines the word substantial as ‘of considerable importance, size or worth’. A determination therefore has to be made of what amount of finance to an organization is ‘of considerable importance’ for it to come within the ambit of Section 2(h).

Any organisation, not covered by Sections 2 (h) (a), (b), (c) or (d), will still fall under the ambit of public authority if it meets the requirements given under Section 2(h)(i) or (ii). In both these clauses a determination has to be made as to whether a body or organisation is substantially funded or not. As the Act does not define ‘substantial’, it is necessary to first define this word. As the concept of public authority is relatively new in the Indian legal scenario, the Commission is not able to find a useful precedent in law to define substantial funding. Cases decided by Courts with regard to Article 12 of the Constitution of India are not applicable in the present case as the Parliament has deliberately used the words ‘public authority’ and not ‘state’ in the Right to Information Act.

I am of the view that substantial funding can be decided through two methods- first to identify what percentage of the organisation’s income is given by the government which is ‘of considerable importance’ to its revenue; and second, to identify an amount of money which in the Indian scenario would, in itself, be ‘of considerable importance’. Both methods if applied on a case-to-case basis are vulnerable to a charge of arbitrariness. Therefore, I take this opportunity to lay a specific guideline to decide whether a body is substantially financed by the government or not. I am aware that such a guideline is also open to a charge of arbitrariness but it is better to have a pre-decided transparent standard which everyone can follow rather than a post-facto case-to-case determination. I recognize that for this particular matter the guideline that I lay down would be a post-facto determination but the precedential value of this decision could help remove the arbitrariness to a large extent.

I believe a funding of Rs. 5,00,000 per year can be considered as the minimum funding being received by an organization, to consider it as being substantially funded. Such an organization

can be expected to have some full time employees and should certainly be able to discharge its duties under the Right to Information Act. On the other hand we need to set a percentage of the revenue which should be considered as the minimum to determine an organization as being 'substantially financed'. I propose that if 10% of the revenue of an organization comes from government funding, it should be considered to be 'substantially financed'. Thus, **if a body receives a minimum of Rs. 5 lacs and this amount constitutes over ten percent of its annual income, the body can be considered to be 'substantially funded' for the purposes of the Right to Information Act, and would be considered to be a Public authority.**

In the present case, the Respondent Association has submitted its audited Balance Sheet for 2007-2008. From the Balance Sheet it appears that the income and the expenditure of the Association is below Rs. 1,00,000/-. The Complainant has submitted that the Association has been given Rs. 50,000/- recently by the government. This amount falls below the guidelines specified above and therefore the Respondent Association is not substantially financed by the appropriate government and it is therefore not a public authority under Section 2(h) of the RTI Act.

The Complaint is dismissed.

The Respondent Association is not a public authority.

This decision is announced in open chamber.

Notice of this decision be given free of cost to the parties.

Any information in compliance with this Order will be provided free of cost as per Section 7(6) of RTI Act.

Shailesh Gandhi
Information Commissioner
05 October 2009

(In any correspondence on this decision, mention the complete decision number.)_{Rnj}